UNITED
NATIONS

E

Economic and Social Council

PROVISIONAL

E/1998/SR.48
15 December 1998

ORIGINAL: ENGLISH

Substantive session for 1998

PROVISIONAL SUMMARY RECORD OF THE 48th MEETING

Held at Headquarters, New York,
on Friday, 31 July 1998, at 3 p.m.

President: Mr. SOMAVIA (Chile)

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Corrections to this record should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

The meeting was called to order at 4 p.m.

SOCIAL AND HUMAN RIGHTS QUESTIONS (continued)

(g) HUMAN RIGHTS (continued) (E/1998/94)

Mr. CHOWDHURY (Bangladesh), Vice-President, reporting on the informal consultations held on the note by the Secretary-General contained in document E/1998/94, said that it had been agreed that it would not be possible for the Council to take a decision on the note since delegations needed time for consultations both within their Missions and with their respective capitals. Members had also agreed that the proposed Council resolution should both request an advisory opinion from the International Court of Justice and call upon the Government of Malaysia to ensure that all judgements and proceedings in the matter were stayed pending receipt of the advisory opinion. It was agreed, lastly, that the proposed Council resolution should be translated into all official languages and made available to members so that a decision on the matter could be taken the following week.

The PRESIDENT said that he took it that the Council wished to resume its consideration of the matter at its resumed session to be held the following week.

It was so decided.

Mr. HASMI (Observer for Malaysia) expressed his delegation's deep regret at the difference which had arisen between Malaysia and the United Nations as a result of the action of the United Nations Special Rapporteur on the Independence of Judges and Lawyers, a national of Malaysia. It took note of document E/1998/94 and of the Secretary-General's decision to seek an advisory opinion from the International Court of Justice through the Economic and Social Council. Malaysia would formally present its position on the issue at the appropriate time, but wished to make a number of comments on the note by the Secretary-General.

With reference to paragraph 7 of the note, the Minister for Foreign Affairs of Malaysia had not refused to amend his certificate but had been unable to do so, given the difference in interpretation by Malaysia as to the extent of the Special Rapporteur's immunities.

With reference to paragraph 14 of the note, it was not correct to say that the Government of Malaysia had insisted that, in order to negotiate a settlement, Maître Fortier must return to Kuala Lumpur. While the Government of Malaysia had requested a second visit by Maître Fortier to Kuala Lumpur to assist in resolving the issue, it was prepared and had in fact decided to send a senior legal official to New York to explore further the possibility of a settlement with the United Nations, an offer that had been acceptable to the Secretary-General. It had been at the further suggestion of the Secretary-General to once again dispatch his Special Envoy to Kuala Lumpur in order to expedite a settlement that the Government of Malaysia had readily agreed to receive Maître Fortier from 25 to 28 July 1998.

Lastly, with reference to paragraph 15, it was not true to state that "the Government of Malaysia was not going to participate ... in settling this matter". While it was true that the Government of Malaysia was not going to participate in preparing a joint submission to the current session of the Council, given the legal constraints, it had cooperated in every way possible with the United Nations in its efforts to resolve the issue.

His delegation deeply appreciated the efforts of the Secretary-General to find an amicable solution to the problem. Notwithstanding the unfortunate difference that had arisen with the United Nations, Malaysia remained fully committed to the Organization and would continue to play an active part in all its activities.

IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTIONS 50/227 AND 52/12 B (continued) (E/1998/81)

Mr. ATIYANTO (Observer for Indonesia), speaking on behalf of the Group of 77 and China, said that it had not been possible to hold informal consultations on the issue of the utilization of the development dividend. The Group of 77 and China, however, attached great importance to the issue and regretted that the report of the Secretary-General contained in document E/1998/81 had been submitted to the Council for consideration instead of to the relevant intergovernmental bodies, as provided for in paragraph 6 of General Assembly resolution 52/235. The Group of 77 and China, which had always negotiated in good faith, therefore wished to propose the following draft decision:

"The Economic and Social Council,

Recalling General Assembly resolutions 52/220 and 52/235 and the regulations and rules governing programme planning in the United Nations,

Looks forward to the outcome of the consideration of the Secretary-General's report E/1998/81 on the utilization of the Development Account under section 34 of the United Nations regular budget by the relevant intergovernmental bodies."

Mr. SIAL (Pakistan) supported the statement made by the representative of Indonesia on behalf of the Group of 77 and China. In order to avoid confusion in the way the Organization's work was conducted, it was important to abide by the relevant regulations and rules, which provided that the item should be considered by the relevant intergovernmental bodies, namely the Second Committee, the Fifth Committee and the Committee for Programme and Coordination.

Mr. GLANZER (Observer for Austria) said that his delegation needed time to consult with the other members of the European Union before it could state its position on the text just proposed.

The PRESIDENT said that the problem might be met by deferring consideration of the matter until the session resumed the following week. It might also be possible for the Council to merely take note of the report of the Secretary-General without addressing the substantive issues which it raised.

Mr. ATIYANTO (Observer for Indonesia), speaking on behalf of the Group of 77 and China, said that the Group of 77 and China did not wish the Council to take a decision on the matter and that was precisely the aim of the draft decision which he had proposed and on which he hoped a consensus could be reached.

Ms. FAHMY (Observer for Egypt) said that there was no legislative basis for the Council's consideration of the report of the Secretary-General. Indeed, for the Council to do so would be a violation of the Charter. She therefore hoped that consensus could be reached on the proposal by the Group of 77 and China.

Mr. SIAL (Pakistan) asked under which regulation or rule the Council was permitted to consider a report concerning proposals for the use of funds by the Organization.

Ms. HORMILLA CASTRO (Cuba) said that, while the issue under consideration should not obscure the genuine achievements of the Council's current substantive session, it did highlight the need for complete transparency in the Council's discussions of all items. Given the concerns expressed by the Group of 77 and China, it was difficult to understand why it was not possible to suspend the meeting for a few minutes to permit the consultations that were necessary to reach a consensus.

The PRESIDENT said that it would be pointless to suspend the meeting, however, unless there was a real possibility of reaching a consensus on the draft text.

Mr. PANEVKIN (Russian Federation) said that it would be better for the Council to take a final decision on the matter at its resumed session the following week to give delegations time to consult among themselves and with their capitals.

Mr. MEROUANE (Algeria) said that it would be most helpful to delegations if the meeting were suspended for a few minutes to permit consultations. If that was not feasible, his delegation would request that the meeting be suspended to permit consultations on the President's proposals to defer consideration of the matter until the following week.

It was so agreed.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

Mr. GLANZER (Observer for Austria), speaking on behalf of the European Union, said that his group could accept the draft decision proposed orally by Indonesia.

The PRESIDENT said that he took it that the Council wished to approve the draft decision proposed orally by Indonesia and supported by the European Union.

It was so decided.

Mr. HYNES (Canada) said that his delegation supported the draft decision; in accepting it, the Council had taken action on the Secretary-General's report on the Development Account. He felt that it was quite appropriate for the Secretary-General to have submitted the report on the question to the Council given the Council's oversight role in the areas of economic and social development, and that it was inappropriate to suggest that the Secretary-General had violated the Charter in doing so.

Ms. FAHMY (Observer for Egypt) asked the Secretary to insert the full, correct title, "Rules and regulations governing programme planning of the United Nations monitoring and evaluation", into the oral decision.

Mr. ATIYANTO (Observer for Indonesia), speaking on behalf of the Group of 77 and China, expressed his appreciation for the understanding shown by members in an area of legitimate concern to the Group of 77 and China, which were the sole beneficiaries of the Development Account.

Mr. WINNICK (United States of America) said that his delegation welcomed the Secretary-General's report on the Development Account (E/1998/81) and agreed with the representative of Canada that it was quite appropriate for the Council to have that report before it.

Mr. SIAL (Pakistan) agreed with the Observer for Egypt that the corrected title should be inserted into the decision.

Mr. SCHALIN (Finland) asked the Secretariat to correct operative paragraph 3 of document E/1998/L.38 under agenda item 7 (f), to reflect the consensus arrived at during informal consultations.

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued) (E/1998/L.47)

Draft decision E/1998/L.47

Mr. CHOWDHURY (Bangladesh) introduced draft decision E/1998/L.47, "Themes for the 1999 substantive session of the Economic and Social Council" which indicated that the theme for the high-level segment would be "The role of employment and work in poverty eradication: the empowerment and advancement of women", and that the theme for the coordination segment would be "Development of Africa: implementation and coordinated follow-up by the United Nations system of initiatives on African development".

The PRESIDENT said that he took it that the Council wished to approve draft decision E/1998/L.47.

It was so decided.

SUSPENSION OF THE 1998 SUBSTANTIVE SESSION OF THE COUNCIL

The PRESIDENT said that the 1998 session of the Economic and Social Council had contributed to increasing the political presence and influence of the Council, through what he called management diplomacy, the art of harmonizing different interests and at the same time improving the quality of the process and the end product, combining good policy with good management.

The year's work had been marked by a series of firsts. The Secretary-General had addressed the Council's organizational session, a special high-level meeting with the Bretton Woods institutions had been convened and a unique session dedicated to the coordinated and integrated follow-up to United Nations summits and conferences had been held, at which it had been decided to hold an informal meeting of the Council on basic indicators and a balanced and forward-looking resolution had been adopted to provide guidance to the United Nations system. The Chairpersons of the functional commissions had met and exchanged experience. They had given their opinions with respect to their working methods and relationship with the Council and the Bureau had exchanged views with the bureaux of various functional commissions. A ministerial communiqué had been adopted at the conclusion of the high-level segment and a humanitarian affairs segment had been held for the first time and its agreed conclusions had been adopted unanimously. The Bureau of the Council had agreed on a new method of distribution of work and each Vice-President had assumed specific responsibilities.

In addition, reforms had been initiated: the Commission on Science and Technology would be reduced from 53 to 33 members; two subsidiary bodies would be combined into the Committee on Energy and Natural Resources for Development; and the working methods of the functional commissions would be made more effective and better integrated with the Council. The Regional Commissions and their reforms had been reviewed in depth and their role within the United Nations system and within their regions had been highlighted. The Executive Secretaries of those Commissions had participated in the work of the Council and the relationship between the Council and the Regional Commissions had clearly been strengthened. Finally, a document on the programme budget implications of the Council reforms had been submitted, showing that those reforms would actually save money for the Organization.

A great deal had been achieved in one year, but he stressed that much work remained to be done to further streamline the Council's methods of work. He reiterated that good product required good process and he was confident that all members shared the commitment to deepen and expand the advances made.

Mr. DESAI (Under-Secretary-General for Economic and Social Affairs) said that much of what had been achieved during the current session of the Economic and Social Council was due to the outstanding, wise and considerate

leadership of its President. Moreover, there had been close cooperation between the President, the Bureau of the Council and the United Nations Secretariat; the Vice-Presidents had contributed to collegiality in the management of the Council; and, the Bureau had worked as a team helping the Council to reach decisions.

The current session had also been very productive due to the intense preparatory work and increased interaction with the delegations. The inclusion of a humanitarian segment was to be welcomed since there was no other forum where humanitarian affairs were discussed at the policy level; however, more time should be dedicated to interaction and dialogue. The Council's efforts to streamline its own subsidiary entities had produced clear decisions leading to effective changes in contrast to other bodies of the United Nations where reform was still in progress. Still, the general segment needed to be reviewed; in particular, ways had to be found to make it more effective in coordinating the Council's subsidiary bodies.

Lastly, he assured the delegations that the Secretariat was committed to strengthening the work of the Council.

Mr. WIBISONO (Observer for Indonesia), speaking on behalf of the Group of 77 and China, said that the session had been very productive because its scope was expanded and because it evoked greater participation by various affiliated groups. The different formats employed, such as panel discussions, had yielded a wide range of ideas and insights and while there remained room for further improvement, there had been positive trends, in particular, in the outcomes of the major segments. The adoption of a ministerial communiqué after the high-level segment, for example, would help to increase the Council's impact when it addressed the core issues of development.

Hopefully, the resolution on gender mainstreaming would further strengthen efforts to incorporate the gender perspective at the field level. The agreed conclusion regarding the Vienna Declaration and Programme of Action reaffirmed its validity while avoiding duplication of work on human rights issues by the Council's subsidiary bodies. Through the humanitarian affairs segment, the Council was able, for the first time, to lay the foundation for strengthening coordination between the agencies of the United Nations system, Governments and civil society on the issues of humanitarian assistance and the resources required for it to be effective.

Also for the first time, the general segment had focused on specific areas related to integrated and coordinated follow-up and implementation of the major United Nations conferences. An informal meeting on basic indicators would be a first step in gathering data in order to identify the existence of any gaps, duplications or overlaps.

Lastly, he congratulated the President of the Council on his appointment as Director General of the International Labour Organization (ILO) and expressed the hope that it would lead to enhanced coordination between the work of the Council and ILO.

Mr. SUCHARIPA (Observer for Austria), speaking on behalf of the European Union, said that the substantive session had strengthened the Council's role as envisaged in the Charter. Several important meetings had been held prior to the substantive session. The interactive nature of such meetings should be further improved by inviting fewer panellists, and they should have a specific focus and generate added-value for the substantive session. The participation of the representatives of the Bretton Woods institutions during both the special high-level meetings and the substantive session was particularly gratifying.

The different segments of the session had reached conclusive results due to effective and efficient preparatory work. The innovative humanitarian segment should be repeated on a yearly basis, although, as suggested in the conclusions, improvements needed to be discussed. The results of the coordination segment demonstrated that it was an appropriate tool for ensuring coherent and integrated work among the bodies of the United Nations system.

It was unfortunate that the resolution adopted following the operational segment had not offered specific guidance to the Secretary-General with regard to the triennial comprehensive policy review of operational activities for development of the United Nations system that would be discussed by the General Assembly during its fifty-third session.

Although progress had been made in revitalizing the Council, there was still room for improvement. For example, the agenda of the general segment required further streamlining in order to align the Council's review of the work of its subsidiary bodies with its managerial and oversight functions. The Council should be able to conduct targeted discussions on items which require its particular attention; and the timely availability of reports was crucial to

enable the Council to fulfil its oversight and guidance role. The marked improvement in the preparations for most segments should be pursued, in particular through improved interaction with the Bureau on organizational questions related to the preparation and conduct of the substantive session.

Mr. WINNICK (United States of America) urged the Council to select Bureau members who were prepared to make the necessary commitment since, if the Council was to function year-round, it had to rely on the leadership of its Bureau.

His delegation considered that the high-level segment on market access had proved far more productive than anticipated and supported the approach of using a communiqué format for the outcome. The results of discussions on the triennial policy review of operational activities could have been more substantive and more work would have to be done on that review during the forthcoming General Assembly.

Mr. ITO (Japan) said that the substantive session had been one of the best organized to date and was a model for future sessions.

The PRESIDENT announced that at a subsequent meeting to be held the following week, the Council would deal with a number of outstanding issues, including election of the members of the Commission on Science and Technology for Development, the Committee on Development Policy and the Committee on Energy and Natural Resources for Development. In the interval before the resumption of the session, the Council would hold informal consultations on implementation of General Assembly resolutions 50/227 and 52/12 B and on cooperation between the Bretton Woods institutions and the United Nations system.

He then declared suspended the 1998 substantive session of the Council.

The meeting rose at 5.50 p.m.

UNITED NATIONS

E

Economic and Social Council

PROVISIONAL

E/1998/SR.49
15 December 1998

ORIGINAL: ENGLISH

Resumed substantive session for 1998

PROVISIONAL SUMMARY RECORD OF THE 49th MEETING

Held at Headquarters, New York,
on Wednesday, 5 August 1998, at 10.30 a.m.

President: Mr. CHOWDHURY (Vice-President) (Bangladesh)

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SOCIAL AND HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS (continued)

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued)

SUSPENSION OF THE RESUMED 1998 SUBSTANTIVE SESSION

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The meeting was called to order at 10.50 a.m.

SOCIAL AND HUMAN RIGHTS QUESTIONS: HUMAN RIGHTS (continued) (E/1998/94 and Add.1, E/1998/L.49)

The PRESIDENT introduced the draft decision contained in document E/1998/L.49. He stressed the urgency of referring the case to the International Court of Justice and requesting that the Malaysian Government stay proceedings until the Court had issued an opinion.

Mr. REYES RODRÍGUEZ (Cuba) said that his delegation would like to amend operative paragraph 1 by deleting from lines 7 to 9 "in the circumstances ... in this case." That section could be included as a last preambular paragraph and would then read "Taking note of the circumstances ... in this case;". He believed that the reference to the note by the Secretary-General (E/1998/94) might prejudge the Court's decision. Moreover, each party would in any case have an opportunity to explain its position.

In operative paragraph 2, "Calls upon" should be replaced by "invites".

Mr. HYNES (Canada) said that it would be difficult to accept any changes to the text without consultations concerning the legal implications. With regard to operative paragraph 1, it was important to retain the reference to the note by the Secretary-General in order to provide the Court with the basic facts to which to refer in making its decision.

Mr. LAVALLE-VALDÉS (Observer for Guatemala) agreed with the representative of Canada that it was important to retain the reference to the note of the Secretary-General in operative paragraph 1, although he felt that it could be amended to read "paragraphs 4 to 15" since paragraphs 1 to 3 only provided background information.

Mr. REYES RODRÍGUEZ (Cuba) pointed out that his delegation had not participated in the drafting or adoption of the note by the Secretary-General, which simply represented the point of view of the Secretary-General. The operative paragraph as it stood conferred legal status on the note and his delegation therefore could not agree to retain it since that would tend to prejudge the deliberations of the Court.

Mr. THEUERMANN (Observer for Austria), speaking on behalf of the European Union, said that it would be difficult to make changes to the text without further consultations and instructions from Governments. It was his opinion that the text should stand as written since it was very important that reference be made to the note by the Secretary-General; the note explained the circumstances of the case, and the opinions it expressed were certainly not binding on the Court. The Court would base its opinion on the presentations by the parties. It was also important to retain the reference to the "legal obligations of Malaysia" at the end of operative paragraph 1.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs), speaking on behalf of the Secretary-General, stressed the importance of retaining the reference to the circumstances of the case in operative paragraph 1, since the phrasing was not binding on the other party, which had in any case approved the text. In addition, the deletion of the reference to the legal obligations of Malaysia would strip the referral to the Court of all meaning. He reiterated that the Secretary-General felt that it was imperative that the text stand as written. With reference to the amendment suggested by Guatemala, he believed it important that the original text be retained since paragraphs 1 to 3 contributed to the explanation of the facts.

Mr. KAMITANI (Japan) said that his delegation supported the draft decision as read and that any changes would require consultations, which would further delay a resolution of the dispute.

Mr. REYES RODRÍGUEZ (Cuba) suggested, with reference to operative paragraph 1, that a possible compromise might be simply to substitute "taking note of" for "in" before "circumstances" in the last part of operative paragraph 1.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that that amendment to operative paragraph 1 would be acceptable. In operative paragraph 2, the Secretary-General would prefer to use the stronger verb "calls upon".

Mr. XIE Bohua (China) asked how long it was expected to take for the International Court of Justice to issue its opinion and whether Malaysia was under any obligation, as a State party to the Convention on the Privileges and Immunities of the United Nations, to stay the actions in its courts pending the rendering of that opinion.

Mr. THEUERMANN (Observer for Austria), speaking on behalf of the European Union, said that the Union could accept the proposed amendment to paragraph 1. It would prefer to leave paragraph 2 as drafted.

Mr. PFIRTER (Observer for Switzerland) said that perhaps the difficulty lay in the translation, in that the word "Exhorta", used in the Spanish version, was stronger than the terms used in English and French.

Mr. AZLAN (Observer for Malaysia) reiterated that his delegation had noted three factual errors in the note by the Secretary-General. With regard to the last sentence of paragraph 7, the Minister of Foreign Affairs had not refused to amend his certificate, but had been unable to do so. Turning to paragraph 14, the Government of Malaysia had not insisted that Maitre Fortier should return to Kuala Lumpur, but rather, had requested him to do so. Finally, referring to paragraph 15, he said that the Government of Malaysia would prepare its own submission to the International Court of Justice.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that, based on material made available to the Office of Legal Affairs by the International Court of Justice, the case would be considered as a priority and would be taken up in the fall of 1998. In reply to the representative of China, staying the proceedings was not an obligation of the State party under the Convention, and did not imply termination of the proceedings, but simply suspending them until the advisory opinion was received. In the early stages of the negotiations with the Government of Malaysia, they had stayed the proceedings. Any action by the Malaysian courts, however, would prejudge the opinion of the International Court of Justice.

Mr. REYES RODRÍGUEZ (Cuba) asked whether all language versions of the text of the draft resolution had equal validity.

Mr. ZACKLIN (Assistant Secretary-General for Legal Affairs) said that all the official language versions had equal value. However, in the event of a difference in meaning the Court could use the original language, which in that case was English.

The meeting was suspended at 11:40 a.m. and resumed at 11.55 a.m.

In the light of an exchange of views in which Canada, Guatemala, Austria and Switzerland took part, Mr. REYES RODRÍGUEZ (Cuba) proposed that in paragraph 2, the word "Exhorta" should be replaced by "Invita" in the Spanish version only. The English text would remain unchanged.

Ms. MESDOUA (Algeria) said that the same amendment should be made in the Arabic version of the draft decision.

Draft decision E/1998/L.49 was adopted as amended.

ADOPTION OF THE AGENDA AND OTHER ORGANIZATIONAL MATTERS (continued) (E/1998/96, E/1998/L.47)

The PRESIDENT said that the Council had not been in a position to adopt formally the draft decision on themes for the 1999 substantive session of the Economic and Social Council at its previous meeting because the related note by the Secretary-General, E/1998/96, had not been available in all the official languages.

Draft decision E/1998/L.47 was formally adopted.

SUSPENSION OF THE RESUMED 1998 SUBSTANTIVE SESSION

The PRESIDENT declared suspended the 1998 resumed substantive session of the Economic and Social Council.

The meeting rose at 12.10 p.m.